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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,815	10/27/1999	DAVID P. ROSSUM	17002-01400U	3803

21186 7590 12/08/2006

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EXAMINER

FLANDERS, ANDREW C

ART UNIT PAPER NUMBER

2615

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/427,815

Applicant(s)

ROSSUM, DAVID P.

Examiner

Andrew C. Flanders

Art Unit

2615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 17-27, 29, 31, 33 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 17-27, 29, 31, 33
Claim(s) objected to: _____
Claim(s) rejected: 1-16, 28, 30 and 32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Remarks

Applicant alleges:

It should be noted from the above that "[i]n determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result is "useful, tangible and concrete."

Claim 1 relates a "method for converting an input signal at an input sample rate to one of a plurality of differing intended output sample rates and includes the limitation of "wherein an output signal is produced having a sequence of data samples approximating the input signal." It is submitted that this claim is clearly for a practical application and provides a "Useful, Concrete and Tangible Result" as required by the Examination Guidelines.

"In *Alappat* a smooth waveform was held to be 'a useful, concrete and tangible result'. In the present invention, as claimed in claim 1, the useful, concrete and tangible result is an output signal with a different sample rate. The smooth waveform of *Alappat* would be an improved representation of an original waveform that is less smooth. Similarly, an output signal with a higher sample rate would contain many additional sample points compared to an input signal with a lower sample rate, and thus, like *Alappat*, provide an output that when displayed is more smooth than the original signal. It is submitted, at the very least in view of *Alappat*, that sample rate conversion of claim 1 provides a useful, concrete and tangible to a person of skill in the art.'

Examiner respectfully disagrees. There are a number of distinctions that differentiate the claim in *Alappat* and the claim at issue in the present case. First and foremost, the claim in *Alappat* is directed toward a Rasterizer (i.e. machine/apparatus) whereas the claim at issue is directed to a method. For this reason alone, *Alappat* should not apply.

Additionally, Applicant claims that the invention produces a more smooth signal. However, this is neither claimed, nor discloses in Applicant's specification. Since there is no support for this statement, the claims cannot be correlated to Alappat.

Applicant argues that having more samples results in a smoother wave. However, this ~~is~~ only works when comparing an original signal that has been sampled. In Applicant's claim the claim is being 'resample' at a higher rate. Re-sampling a digital signal cannot make the signal any more smooth in comparison to the original signal.

Applicant further alleges that sample rate conversion is an example of a practical application.

Examiner respectfully disagrees. The guidelines set forth two ways to show practical application. The first is a transformation of an article or physical object to a different state or thing the second is producing a useful, concrete, and tangible result. The claimed invention does not produce a useful, concrete and tangible result as shown above. As to the first test, sample rate conversion is not a transformation of a physical object. It is merely a manipulation of data which is stored as energy.


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SUPERVISORY PATENT EXAMINER